application was not approved by the Mail Center.

Testifying for the Commission before the arbitration panel, Ms. Laurell asserted that the vending machines operated by the Canteen were in direct competition with her operation. Additional testimony demonstrated that the Canteen, a national corporation, purchased in bulk and could offer the same products as those available at the Commission facility, but at lower prices, and that the Canteen's low prices were part of a ''no profit'' or ''break even'' policy, which was directed at benefitting the postal employees. As a result, profit from the Commission facility was limited to approximately $24,000 per year, which was too low to make Ms. Laurell's facility a viable operation in terms of sharing of competing vending machine income.

The Administrator of the Business Enterprise Program, Michigan Commission for the Blind, who was involved in setting up the vendor facility at the Mail Center in 1983, believed that the assigned blind vendor should have been given priority to operate all food services at the facility. Postal Service management disagreed, asserting that a blind person could not safely work on the workroom floor because of danger from mechanized equipment as evidenced by incidents in which postal employees had been hit and injured by mail-moving equipment. The Postal Service's position was that blind vendors posed a safety problem and that, if it had been determined that the vending machines were to be operated by blind vendors, management may have decided to remove the machines.

Arbitration Panel Decision

The key issue of the dispute, as identified by the panel, was the extent to which the blind vendor should be given priority in operating all the vending facilities at the Detroit Bulk Mail Center. Because the Randolph-Sheppard Act limited the priority provided to blind vendors to the extent that any facility operated by a blind vendor ''would not adversely affect the interests of the United States,'' the panel concluded that the Postal Service was not required to approve the Commission's request to operate all of the vending machines at the Mail Center. Specifically, the panel identified the possibility for injury as among those circumstances that might adversely affect the Federal Government's interests. Hence, the Postal Service's legitimate safety concerns for a blind vendor servicing machines on the workroom floor supported its decision not to afford the blind vendor priority in operating those facilities. Other factors cited by the panel in support of the Postal Service's position included—(1) the potential negative effect on employee morale that would result from a management decision to eliminate vending machines from the work area for purposes of safety; and (2) the finding that the Canteen-run vending machines on the workroom floor were not in ''direct competition'' with the blind vendor since the Central Lunchroom operated by the blind vendor was not readily accessible to most postal employees.

While the panel offered the preceding rationale for supporting the Postal Service's actions in connection with the workroom floor vending machines, the status of those machines could not be conclusively decided until the Postal Service fully justified its finding in writing to the Secretary, as required under the Act. Accordingly, the panel remanded the issue of the working area machines to the Postal Service, either to resolve with the Commission or to handle in accordance with section 107(b) of the Act.

As to the non-workroom vending facilities, the panel concluded that the blind vendor should be given priority in operating those facilities on the basis that—(1) the potential safety hazards that existed on the workroom floor were not present at those sites; and (2) the vending machines at those locations were situated in non-mail processing areas, were relatively close to the Central Lunchroom operated by the blind vendor, and were, therefore, in direct competition with the blind vendor's operation. Thus, the panel found that the priority requirement of the Act had been satisfied and ruled that the operation of vending machines in the non-workroom area be turned over to the blind vendor or the Commission as soon as possible. In addition, the Postal Service was ordered to pay an amount equal to the profits from the operation of these machines to the blind vendor or the Commission from the time the option to operate those machines became available to the Commission.

The panel member appointed by the Commission, concurring in part and dissenting in part with the majority, wrote a separate opinion in which he stated that he would require the Postal Service to make restitution to the Commission for its failure to follow the law when it denied the blind vendor priority in operating the vending machines at the Mail Center. The panel member also dissented from the majority's conclusions concerning the alleged safety risks to the blind vendor on the workroom floor and the panel's resolution of the direct versus indirect competition issue, citing the absence of competent, factual evidence from both parties.

The views and opinions expressed in the arbitration panel decision do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: January 17, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–1577 Filed 1–20–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on August 15, 1991, an arbitration panel rendered a decision in the matter of *Florida Department of Education, Massachusetts Commission for the Blind, and Virginia Department for the Blind and Visually Handicapped* v. *United States Department of Defense, (Docket Nos. R–S/85–8, 87–1, and 87–4).* This panel was convened by the Secretary of the U. S. Department of Education pursuant to 20 U.S.C. 107d–1(b). The Randolph-Sheppard Act (the Act) creates a priority for blind vendors to operate vending facilities on Federal property. Under this section of the Act, the State licensing agency (SLA) may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

In 1984 the Department of Defense, through its agents and officers, solicited proposals for fast food hamburger operations. The Army and Air Force Exchange Service (AAFES) and the Navy Resale and Services Support Office (NAVRESSO) subsequently signed contracts with two national fast food companies, McDonald's Corporation and Burger King Corporation. By a contract dated August 7, 1984, the Navy awarded to McDonald's Corporation exclusive rights to operate fast food hamburger facilities on naval installations for a period of 10 years. The contract signed by the Navy involved an exclusive franchise effort consisting of the construction and operation of a minimum of 40 and a maximum of 300 fast food facilities. These facilities would be owned and operated by the McDonald's Corporation. On May 15, 1984, AAFES purchased a franchise from the Burger King Corporation. The AAFES contract involved the construction of 185 franchised facilities. Under the terms of the AAFES contract, the Burger King facilities were to be operated by AAFES, with a portion of the profits being remitted to Burger King.

The SLAs in the four States initially protested the preceding fast food contracts. They were in Florida, Massachusetts, Virginia, and Kansas. The Kansas Department of Rehabilitative Services subsequently withdrew its request for arbitration.

These SLAs, through representative organizations, brought two actions in United States District Court for the District of Columbia regarding the alleged violations of the Act by the Secretary of Defense and the Secretaries of Navy, Army, and Air Force, along with NAVRESSO and AAFES personnel. The SLAs requested the Court to terminate the contracts with McDonald's and Burger King Corporations.

The Court held that the Act did not apply to the disputed contracts. *Randolph-Sheppard Vendors of America* v. *Weinberger*, 602 F. Supp. 1007 (D.D.C. 1985). On appeal, the United States Court of Appeals for the District of Columbia Circuit held that plaintiffs were required to first pursue and exhaust any available remedies under the Act before seeking judicial relief. *Randolph-Sheppard Vendors of America* v. *Weinberger*, 795 F.2d. 90 (D.C. Cir. 1986).

On April 5, 1985, the Florida Department of Education, the SLA, requested the Secretary of Education to convene an arbitration panel concerning the McDonald's contract with the Department of Navy. On December 31, 1986, this request was amended to include the Burger King Corporation contract. The SLA alleged that the Department of Defense (DOD) failed to give notice to any SLA regarding the solicitation of proposals for fast food service on Navy, Army, and Air Force installations and that the awarding of the contracts to McDonald's and Burger King Corporations without regard to the priority given to blind vendors by Congress was a violation of the Act.

In addition, the Florida Department of Education alleged that the McDonald's and Burger King franchises on military installations placed a limitation upon the placement of blind vending facilities and that by imposing such a limitation DOD failed to submit a justification in writing to the Secretary of Education seeking a Secretarial Determination pursuant to 20 U.S.C. 107(b).

On October 21, 1986, the Massachusetts Commission for the Blind requested arbitration concerning McDonald's contract with the Department of the Navy and on March 25, 1987, amended its request to include the Burger King Corporation contract with AAFES. Similarly, on November 28, 1986, the Virginia Department for the Blind and Visually Handicapped requested arbitration concerning McDonald's Corporation contract with the Department of Navy and on August 5, 1988, amended its complaint to include the Burger King Corporation contract with AAFES.

By letter dated April 24, 1987, the arbitration complaints of Florida, Massachusetts, and Virginia were consolidated into one complaint, and hearings were held by the arbitration panel on July 20, 1988 and November 15, 1988 at the United States Department of Education Headquarters Office in Washington, D.C.

Arbitration Panel Decision

In an Interim Award dated January 31, 1990, the arbitration panel found that DOD violated the Randolph-Sheppard Act and applicable regulations.

The panel concluded that DOD failed to notify the SLAs of its intention to solicit bids for vending facilities. DOD contended that it was not obligated to notify the SLAs. The panel ruled that the explicit notice requirements established by Congress in 34 CFR 395.31(c) are evidence of Congressional intent that SLAs be afforded adequate opportunity to protect their interests by receiving advance notification of the Federal Government's plans to purchase, lease, renovate, or otherwise acquire property that might trigger an obligation to provide priority for blind vendors.

Finally, the arbitration panel found that DOD failed to meet the requirements of section 107b, which states in relevant part that ''Any limitation on the placement or operation of a vending facility based on a finding that such placement or operation would adversely affect the interests of the United States shall be fully justified to the Secretary, who shall determine whether such limitation is justified.'' The arbitration panel concluded that, whether or not DOD believed it would gain approval from the Secretary of Education regarding its limitation request, DOD was required to seek the Secretary's approval pursuant to section 107b.

In dissent one panel member agreed with the District Court interpretation of the statutory meaning of the words ''priority'' and ''limitation.'' That panel member stated that DOD's solicitation for fast food operations does not come within the statutory or regulatory definition of cafeteria and that, therefore, no violation of the Act and regulations occurred.

The arbitration panel retained jurisdiction of the complaint for the purpose of determining remedy and other remaining aspects of the dispute. On August 15, 1991, the arbitration panel rendered its final award and opinion on remedy.

The panel ruled that AAFES should contact the petitioner SLAs in each State where a Burger King facility now exists and should establish a procedure acceptable to the SLAs for identifying, training, and installing blind vendors as managers of all current and future Burger King operations conducted within their jurisdiction pursuant to the disputed contract. Additionally, DOD should give the SLAs 120 days written notice of any new Burger King operations to be established. The SLA and DOD would arrange for remuneration of the blind vendor consistent with custom and practice of other SLA-sponsored food facilities under the Act. Any dislocation of persons currently managing these facilities would be at the discretion of AAFES provided that the management of the facility would be transferred to the blind vendor upon successful completion of training.

Regarding the NAVRESSO contract with McDonald's Corporation, DOD would provide to the appropriate SLA no less than 120 days notice of any new McDonald's facility to be established. The SLA then would determine whether it wished to exercise its priority and to

provide funds to build and operate a new McDonald's facility within its jurisdiction. If timely notice were delivered in writing to DOD within 60 days after receipt by the SLA, a priority right to operate the McDonald's franchise would be given to the SLA and to a competent, qualified manager recommended by the SLA.

Further, NAVRESSO within 60 days must communicate to the SLAs involved in the dispute a plan for establishing the priority of blind vendors pursuant to the Act in the event that another McDonald's restaurant would be established within the jurisdiction of these SLAs. The parties also would draft procedures for communicating notice of intent to operate McDonald's restaurants within the jurisdiction and determine criteria for selecting competent blind managers.

Subsequently, concurrent court proceedings before the United States District Court for the District of Columbia regarding this dispute have been cancelled, and the case has been dismissed.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: January 11, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–1578 Filed 1–20–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on October 19, 1992, an arbitration panel rendered a decision in the matter of *Keith McMullin* v. *Department of Services for the Blind, State of Washington, (Docket No. R–S/91–8).* This panel was convened by the Secretary of the U. S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Keith McMullin, on April 29, 1991. The Randolph-Sheppard Act provides a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary fair hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

The complainant, Keith McMullin, is a blind vendor licensed by the respondent, the Washington Department of Services for the Blind, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* The Department is the SLA responsible for the operation of the State of Washington's vending facility program for blind individuals.

On November 13, 1964, the General Services Administration (GSA) issued a permit to the SLA to operate a vending facility at the Federal Office Building in Richland, Washington. The articles to be vended were— ''magazines, cigars, cigarettes and related tobacco items, coffee, candy, novelties, ice cream, cold beverages, greeting cards, cookies, etc.'' Mr. McMullin operated the vending facility from the time the building was opened. At that time, a fountain head and jet spray beverage equipment were installed for dispensing soft drinks and juices.

About 1965, a cafeteria operation was added to the Federal Office Building, and it was operated under contract between GSA and a private concessionaire. A dispute arose between Mr. McMullin and the operator of the cafeteria concerning the sale of certain items, including beverages.

On October 22, 1970, the Contracting Officer of the Operations Branch of the Buildings Management Division of GSA wrote a letter to the SLA to resolve the dispute. The letter stated in relevant part, ''The blindstand has exclusive right to sell carbonated drinks. . . and any other items prepackaged by the maker in individual servings. . . The blindstand is not authorized to sell coffee and other hot drinks, as these are to be sold by the cafeteria operator exclusively.'' The letter went on to state that the policy statement had been incorporated into the cafeteria operator's contract and had been discussed with the building manager in Richland and with the complainant at the vending facility. Further, GSA believed that, with the agreement of the SLA, the issuance of the letter would become a part of the operator's agreement under which Mr. McMullin's vending facility operated.

In the years that followed, the SLA treated the arrangement made by GSA as granting the vending facility, and therefore the licensed vendor, the exclusive right to sell carbonated beverages. However, on May 16, 1975, GSA informed the SLA that it did not believe the arrangement between them gave Mr. McMullin the exclusive right to sell consumable food products, such as soft drinks, ice cream, and yogurt. The complainant objected to what he believed to be a violation of his exclusive right, and the SLA supported his position. GSA did not pursue this action until March 14, 1979 when the Chief of Operations Branch of the Buildings Management Division of GSA wrote to the SLA stating, ''We do not object to the blind operator selling other drinks, but we do not agree that he has exclusive rights.''

In 1986 the private concessionaire operating the cafeteria ceased doing business, and the contract was assigned to the SLA. Operation of the cafeteria was awarded by contract to another blind vendor. The contract required the sale of soft drinks as part of the full-line cafeteria food service. However, in a letter dated November 8, 1988, the SLA contacted GSA regarding the operation of the cafeteria. The SLA stated that it did not request any change regarding the sale of carbonated beverages because Mr. McMullin had a permit giving him rights to sell those beverages. The cafeteria continued to operate without selling carbonated beverages until May 1989 when it again came to the attention of GSA personnel.

In a letter dated September 14, 1989, the Director of Real Property Management of GSA informed the Director of the SLA that a new permit application should be made for the operation of the vending facility because the current permit did not comply with regulations governing the operation of such a facility under the Randolph-Sheppard Act. In addition, GSA stated that provisions should be made for the sale of soft drinks by the cafeteria.

The SLA made application for new permits for the operation of the facility and the cafeteria. The application for